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A BILL FOR AN ACT

RELATING TO MARRIAGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. This Act shall be known as the Hawaii Marriage
2 Equality Act of 2013. The purpose of this Act is to recognize
3 marriages between individuals of the same sex in the State of
4 Hawaii.

5 The legislature acknowledges the recent decision of the
6 United States Supreme Court in United States v. Windsor, 133 S.
7 Ct. 2675 (2013), which held that Section 3 of the Defense of
8 Marriage Act, Public Law 104-199, unlawfully discriminated
9 against married same-sex couples by prohibiting the federal
10 government from recognizing those marriages and by denying
11 federal benefits and protections to those couples. This
12 legislature has already extended to same-sex couples the right
13 to enter into civil unions that provide the same rights,
14 benefits, protections, and responsibilities under state law as
15 afforded to opposite-sex couples who marry. However, these
16 civil unions are not recognized by federal law and will not
17 receive equal treatment to a marriage under federal law.
18 Therefore, it is the intent of the legislature to ensure that

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1 same-sex couples are able to take full advantage of federal
2 benefits and protections granted to married opposite-sex couples
3 by allowing same-sex couples to marry under the laws of this
4 State. It is the intent of the legislature that marriages
5 solemnized in accordance with this Act be equal in all respects
6 to the marriages of opposite-sex couples under the laws of this
7 State.

8 It is the intent of the legislature that there be no legal
9 distinction between same-sex married couples and opposite-sex
10 married couples with respect to marriage under the laws of this
11 State. Thus, the legislature intends that all provisions of law
12 regarding marriage be applied equally to same-sex couples and
13 opposite-sex couples, regardless of whether this Act does or
14 does not amend any particular provision of law.

15 SECTION 2. Chapter 572, Hawaii Revised Statutes, is
16 amended by adding seven new sections to be appropriately
17 designated and to read as follows:

18 **"§572-A Continuity of rights; civil union or reciprocal**
19 **beneficiary relationships.** (a) Two individuals who are civil
20 union partners or reciprocal beneficiaries with each other and
21 who seek to marry each other shall be permitted to apply for a
22 marriage license under section 572-6 and to marry each other
23 under this chapter without first terminating their civil union

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1 or reciprocal beneficiary relationship; provided that the two
2 individuals are otherwise eligible to marry under this chapter.

3 (b) The couple's civil union or reciprocal beneficiary
4 relationship shall continue uninterrupted until the
5 solemnization of the marriage consistent with this chapter, and
6 the solemnization of the couple's marriage shall automatically
7 terminate the couple's civil union or reciprocal beneficiary
8 relationship.

9 (c) The act of seeking a license for, or entering into, a
10 marriage under this chapter shall not diminish any of the
11 rights, benefits, protections, and responsibilities that existed
12 previously due to a couple's earlier status as civil union
13 partners or reciprocal beneficiaries.

14 (d) The rights, benefits, protections, and
15 responsibilities created by the civil union or reciprocal
16 beneficiary relationship shall be continuous through the
17 marriage and deemed to have accrued as of the first date these
18 rights existed under the civil union or reciprocal beneficiary
19 relationship; provided that the civil union or reciprocal
20 beneficiary relationship was in effect at the time of the
21 solemnization of the couple's marriage to each other.

22 (e) Any rights, benefits, protections, and
23 responsibilities created by the solemnization of a marriage that

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1 were not included within a reciprocal beneficiary relationship
2 shall be recognized as of the date the marriage was solemnized.

3 (f) Property held by the couple in tenancy by the entirety
4 shall be subject to section 509-3.

5 **§572-B Interpretation of terminology to be gender neutral.**

6 When necessary to implement the rights, benefits, protections,
7 and responsibilities of spouses under the laws of this State,
8 all gender-specific terminology, such as "husband", "wife",
9 "widow", "widower", or similar terms, shall be construed in a
10 gender-neutral manner. This interpretation shall apply to all
11 sources of law, including statutes, administrative rules, court
12 decisions, the common law, or any other source of law.

13 **§572-C Right of parents.** Parentage rights based on

14 marriage shall be the same for all married spouses regardless of
15 the gender of the spouses. These rights shall include, but are
16 not limited to, paternity, maternity, and parentage presumptions
17 based on marriage.

18 **§572-D Reliance on federal law.** Any law of this State

19 that refers to, adopts, or relies upon federal law, including
20 but not limited to the Internal Revenue Code, as amended, shall
21 apply to all marriages recognized under the laws of this State
22 as if federal law recognized such marriages in the same manner

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1 as the laws of this State, so that all marriages receive equal
2 treatment.

3 **§572-E Procedure to administratively convert civil unions**
4 **to marriages.** (a) Two individuals who are civil union partners
5 and who entered into the civil union in Hawaii may elect to have
6 their civil union legally converted to a marriage by operation
7 of law without appearing personally before an agent and without
8 solemnization as required by this chapter by:

- 9 (1) Applying for a marriage license pursuant to section
10 572-6 by filing their application, in person or by
11 mail with the department of health;
12 (2) Providing a signed, notarized declaration that they
13 entered into their civil union in Hawaii and that they
14 desire to convert their civil union to a marriage;
15 (3) Paying the marriage license fee as required by section
16 572-5; and
17 (4) Providing all information required by the marriage
18 license application.

19 (b) Upon receipt of a marriage license application and
20 notarized declaration requesting conversion, the department of
21 health shall confirm that the applicants are civil union
22 partners who entered into their civil union in Hawaii and shall
23 issue a certificate of marriage, with the effective date of the

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1 marriage being the date the department accepts the request for
2 conversion for filing.

3 (c) All rights, benefits, protections, and
4 responsibilities of marriage, including continuity of rights as
5 provided in section 572-A, shall apply to civil unions that are
6 administratively converted to marriages pursuant to this
7 section.

8 (d) Certificates of marriage issued pursuant to this
9 section shall be deemed the same as certificates of marriage
10 issued pursuant to section 572-13 and shall be processed in the
11 same manner.

12 (e) Marriages converted from civil unions pursuant to this
13 section shall be deemed solemnized for all purposes.

14 **§572-F Refusal to solemnize a marriage.** Nothing in this
15 chapter shall be construed to require any person authorized to
16 perform solemnizations pursuant to this chapter to solemnize any
17 marriage in violation of the person's rights as guaranteed by
18 the Constitution of this State and the United States
19 Constitution. No authorized person who fails or refuses to
20 solemnize any marriage under this section shall be subject to
21 any fine, penalty, injunction, administrative proceeding, or
22 civil liability for the failure or refusal.

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§572-G Religious organizations and facilities; liability exemption under certain circumstances. (a) A religious organization shall not be required to make a religious facility owned or leased by the religious organization available for solemnization of a particular marriage; provided that:

(1) The religious facility is regularly used by the religious organization for its religious purposes;

(2) For solemnization of marriages pursuant to this chapter, the religious organization restricts use of the religious facility to its members; and

(3) The religious organization does not operate the religious facility as a for-profit business.

(b) A religious organization that refuses to make a religious facility available for solemnization of a marriage under subsection (a) shall not be subject to any fine, penalty, injunction, administrative proceeding, or civil liability for the refusal.

(c) Nothing in this section shall be interpreted to exempt the owner or operator of any religious facility from the requirements of chapter 489 if the religious facility is a place of public accommodation as defined in section 489-2."

SECTION 3. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

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1 **"§572-1 Requisites of valid marriage contract.** In order
2 to make valid the marriage contract, which shall be [~~only~~
3 ~~between a man and a woman,~~] permitted between two individuals
4 without regard to gender, it shall be necessary that:

5 (1) The respective parties do not stand in relation to
6 each other of ancestor and descendant of any degree
7 whatsoever, [~~brother and sister~~] two siblings of the
8 half as well as to the whole blood, uncle and niece,
9 uncle and nephew, aunt and nephew, or aunt and niece,
10 whether the relationship is the result of the issue of
11 parents married or not married to each other or
12 parents who are partners in a civil union or not
13 partners in a civil union;

14 (2) Each of the parties at the time of contracting the
15 marriage is at least sixteen years of age; provided
16 that with the written approval of the family court of
17 the circuit within which the minor resides, it shall
18 be lawful for a person under the age of sixteen years,
19 but in no event under the age of fifteen years, to
20 marry, subject to section 572-2;

21 (3) [~~The man does not at the time have any lawful wife or~~
22 ~~civil union partner living and that the woman does not~~
23 ~~at the time have any lawful husband or civil union~~

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1 ~~partner living,]~~ Neither party has at the time any
2 lawful wife, husband, spouse, civil union partner, or
3 reciprocal beneficiary living, except as provided in
4 section 572-A;

5 (4) Consent of neither party to the marriage has been
6 obtained by force, duress, or fraud;

7 (5) Neither of the parties is a person afflicted with any
8 loathsome disease concealed from, and unknown to, the
9 other party;

10 (6) The ~~[man and woman]~~ parties to be married in the State
11 shall have duly obtained a license for that purpose
12 from the agent appointed to grant marriage licenses;
13 and

14 (7) The marriage ceremony be performed in the State by a
15 person or society with a valid license to solemnize
16 marriages and the ~~[man and the woman]~~ parties to be
17 married and the person performing the marriage
18 ceremony be all physically present at the same place
19 and time for the marriage ceremony."

20 SECTION 4. Section 572-3, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "**§572-3 Contracted without the State.** Marriages between
23 ~~[a man and a woman]~~ two individuals, regardless of gender and

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1 legal [~~in the country~~] where contracted shall be held legal in
2 the courts of this State."

3 SECTION 5. Section 572-6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§572-6 Application; license; limitations.** To secure a
6 license to marry, the persons applying for the license shall
7 appear personally before an agent authorized to grant marriage
8 licenses and shall file with the agent an application in
9 writing. The application shall be accompanied by a statement
10 signed and sworn to by each of the persons, setting forth: the
11 person's full name, date of birth, social security number,
12 residence; their relationship, if any; the full names of
13 parents; and that all prior marriages~~[7]~~ or civil unions, if
14 any, other than an existing civil union between the persons
15 applying for a marriage license, have been dissolved by death or
16 dissolution. If all prior marriages or civil unions, other than
17 an existing civil union between the persons applying for a
18 marriage license, have been dissolved by death or dissolution,
19 the statement shall also set forth the date of death of the last
20 prior spouse or the date and jurisdiction in which the last
21 decree of dissolution was entered. Any other information
22 consistent with the standard marriage certificate as recommended
23 by the Public Health Service, National Center for Health

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1 Statistics, may be requested for statistical or other purposes,
2 subject to approval of and modification by the department of
3 health; provided that the information shall be provided at the
4 option of the applicant and no applicant shall be denied a
5 license for failure to provide the information. The agent shall
6 indorse on the application, over the agent's signature, the date
7 of the filing thereof and shall issue a license which shall bear
8 on its face the date of issuance. Every license shall be of
9 full force and effect for thirty days commencing from and
10 including the date of issuance. After the thirty-day period,
11 the license shall become void and no marriage ceremony shall be
12 performed thereon.

13 It shall be the duty of every person, legally authorized to
14 grant licenses to marry, to immediately report the issuance of
15 every marriage license to the agent of the department of health
16 in the district in which the license is issued, setting forth
17 all facts required to be stated in such manner and on such form
18 as the department may prescribe."

19 SECTION 6. Section 572-13, Hawaii Revised Statutes, is
20 amended by amending subsections (a) and (b) to read as follows:

21 "(a) Recordkeeping. Every person authorized to solemnize
22 marriage shall make and preserve a record of every marriage by
23 the person solemnized, comprising the names of the [man and

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1 ~~woman]~~ parties married, their place of residence, and the date
2 of their marriage.

3 Every person authorized to solemnize marriage, who neglects
4 to keep a record of any marriage by the person solemnized shall
5 be fined \$50.

6 (b) Marriages, reported by whom. It shall be the duty of
7 every person, legally authorized to perform the marriage
8 ceremony, to report within three business days every marriage
9 ceremony, performed by the person, to the agent of the
10 department of health in the district in which the marriage takes
11 place setting forth all facts required to be stated in a
12 standard certificate of marriage, the form and contents of which
13 shall be prescribed by the department of health[-]; provided
14 that, if any person who has solemnized a marriage fails to
15 report it to the agent of the department of health, the parties
16 married may provide the department of health with a notarized
17 affidavit attesting to the fact that they were married and
18 stating the date and place of the solemnization of the marriage.
19 Upon the receipt of that affidavit by the department of health,
20 the marriage shall be deemed to be valid as of the date of the
21 solemnization of the marriage stated in the affidavit."

22 SECTION 7. Section 572C-2, Hawaii Revised Statutes, is
23 amended to read as follows:

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1 " ~~[f]§572C-2[f]~~ **Findings.** ~~[The legislature finds that the~~
2 ~~people of Hawaii choose to preserve the tradition of marriage as~~
3 ~~a unique social institution based upon the committed union of~~
4 ~~one man and one woman. The legislature further finds that~~
5 ~~because of its unique status, marriage provides access to a~~
6 ~~multiplicity of rights and benefits throughout our laws that are~~
7 ~~contingent upon that status. As such, marriage should be~~
8 ~~subject to restrictions such as prohibiting respective parties~~
9 ~~to a valid marriage contract from standing in relation to each~~
10 ~~other, i.e., brother and sister of the half as well as to the~~
11 ~~whole blood, uncle and niece, aunt and nephew.~~

12 ~~However, the legislature concurrently]~~ The legislature
13 acknowledges that there are many individuals who have
14 significant personal, emotional, and economic relationships with
15 another individual yet are prohibited by ~~[such]~~ legal
16 restrictions from marrying. For example, two individuals who
17 are related to one another, such as a widowed mother and her
18 unmarried son~~[, or two individuals who are of the same gender]~~.
19 Therefore, the legislature believes that certain rights and
20 benefits presently available only to married couples should be
21 made available to couples comprised of two individuals who are
22 legally prohibited from marrying one another."

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SECTION 8. Section 580-1, Hawaii Revised Statutes, is amended to read as follows:

"§580-1 Jurisdiction; hearing. (a) Exclusive original jurisdiction in matters of annulment, divorce, and separation, subject to section 603-37 as to change of venue, and subject also to appeal according to law, is conferred upon the family court of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor[÷], except as provided in subsection (b). No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least six months next preceding the application therefor[÷], except as provided in subsection (b). A person who may be residing on any military or federal base, installation, or reservation within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section. The family court of each circuit shall have jurisdiction over all proceedings relating to the annulment, divorce, and separation of civil unions entered into in this State or unions recognized as civil unions in this State in the same manner as marriages.

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1 (b) An action for divorce, separation, or annulment may be
2 commenced where neither party to the marriage meets the domicile
3 or physical presence requirements of subsection (a) at the time
4 the action is commenced, if:

5 (1) The marriage was solemnized under chapter 572; and

6 (2) Neither party to the marriage is able to pursue an
7 action for divorce, separation, or annulment where the
8 parties are domiciled, because the parties are
9 domiciled in a jurisdiction that does not recognize
10 their marriage.

11 There shall be a rebuttable presumption that a jurisdiction will
12 not maintain an action for divorce, separation, or annulment if
13 the jurisdiction does not recognize the parties' marriage.

14 (c) Actions brought under subsection (b) shall be
15 commenced in the circuit where the marriage was solemnized and
16 the law of this State shall govern. Jurisdiction over actions
17 brought under subsection (b) shall be limited to decrees
18 granting divorce, separation, or annulment that address the
19 status or dissolution of the marriage alone; provided that if
20 both parties to the marriage consent to the family court's
21 personal jurisdiction or if jurisdiction otherwise exists by
22 law, the family court shall adjudicate child custody, spousal

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1 support, child support, property division, or other matters
2 related to the divorce, separation, or annulment."

3 SECTION 9. Notwithstanding any other provision of law,
4 nothing in this Act shall invalidate any civil union or
5 reciprocal beneficiary relationship in existence before November
6 1, 2013, which shall continue until terminated in accordance
7 with applicable law.

8 SECTION 10. The department of health may, in its
9 discretion, make any changes that it deems necessary to rules,
10 internal procedures, or forms, to aid in the implementation of
11 this Act.

12 SECTION 11. The department of health and its marriage
13 license agents may issue marriage licenses under section 572-6,
14 Hawaii Revised Statutes, and the department of health may
15 process marriage license applications requesting that a civil
16 union be converted to a marriage under section 572-E, Hawaii
17 Revised Statutes, beginning on October 3, 2013, for the
18 solemnization of marriages to take place consistent with the
19 amendments made by this Act, provided that marriages permitted
20 by this Act shall not be solemnized or administratively
21 converted from a civil union prior to November 1, 2013.

22 SECTION 12. In codifying the new sections added by section
23 2 of this Act, the revisor of statutes shall substitute

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1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 13. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 14. This Act shall take effect on November 1,
6 2013; provided that sections 9, 10, and 11 shall take effect
7 upon approval.

8

9 INTRODUCED BY: _____

10

BY REQUEST

11

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Report Title:

Marriage; Marriage Equality

Description:

Recognizes marriages between individuals of the same sex. Extends to same-sex couples the same rights, benefits, protections, and responsibilities of marriage that opposite-sex couples receive. Permits marriage licenses to be issued beginning October 3, 2013, but solemnizations may begin no earlier than November 1, 2013.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.